

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re)	PROMESA
)	Title III
)	
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,)	No. 17 BK 3283-LTS
)	(Jointly Administered)
)	
As a representative of)	
)	
THE COMMONWEALTH OF PUERTO RICO <i>et al.</i>,)	Re: Dkt. No. 6867
)	Hearing: May 16, 2019 at 2:00 p.m. (A.S.T.)
Debtors.¹)	
)	

**FEE EXAMINER'S LIMITED RESPONSE AND RESERVATION OF RIGHTS WITH
RESPECT TO URGENT JOINT MOTION FOR ENTRY OF ORDER APPROVING
STIPULATION AND AGREED ORDER RELATED TO JOINT PROSECUTION OF
CERTAIN CAUSES OF ACTION OF HTA AND ERS**

TO: HON. LAURA TAYLOR SWAIN,
UNITED STATES DISTRICT JUDGE

The Fee Examiner, by his counsel, responds as follows to the *Urgent Joint Motion for
Entry of Order Approving Stipulation and Agreed Order by and Among Financial Oversight and
Management Board, its Special Claims Committee, and Official Committee of Unsecured
Creditors Related to Joint Prosecution of Certain Causes of Action of Puerto Rico Highways and
Transportation Authority and Employees Retirement System of the Government of the*

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and, (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Commonwealth of Puerto Rico [Dkt. No. 6867] (the “Motion”), filed on May 8, 2019. The Court having set a briefing schedule on May 9, 2019 [Dkt. No. 6880] with an objection or response deadline of May 12, 2019 at 6:00 p.m. (Atlantic Standard Time) and a hearing scheduled for May 16, 2019, at 2:00 p.m. (Atlantic Standard Time), the Fee Examiner states that:

1. In response to the Fee Examiner’s comments on the originally-proposed *Stipulation and Agreed Order By and Among Financial Oversight and Management Board, Its Special Claims Committee, and Official Committee of Unsecured Creditors Related to Joint Prosecution of Debtor Causes of Action* [Dkt. No. 6305], the parties to the stipulation added a provision, included in the order ultimately entered, stating “...nothing herein limits the Fee Examiner’s ability to require that professionals prepare and submit with their fee applications detailed staffing plans outlining the affirmative steps taken to eliminate charges for duplicative services” [Dkt. No. 6524 (the “Commonwealth Joint Prosecution Agreement Order”) at p. 7, ¶ 7]. That provision also appears in the stipulation and draft order, reflecting the challenge posed by duplicative advocacy [Dkt. No. 6867-1, ¶ 7].

2. Since entry of the Commonwealth Joint Prosecution Agreement Order, the parties have commenced hundreds of adversary proceedings. Earlier this week, they filed a joint procedural motion to extend the time for service of process and stay of certain avoidance actions [Dkt. No. 6857] bearing the names of six firms and a total of 20 individually-named attorneys. Because of the retrospective nature of the fee review process, of course, no one will know the cost to prepare and file this ten-page procedural document until a fee application has been filed. However, assuming ethical rules and good practices compelled each of the 20 attorneys to review and approve the motion they apparently signed, that cost could be significant.

3. To avoid after-the-fact disputes on such matters, the Fee Examiner provides this notice in addition to requiring staffing plans to be filed with fee applications, the Fee Examiner may require professionals to provide detailed staffing plans *before* rendering services, just as they do for the monthly budgets they already submit to the Fee Examiner.

4. Duplicative advocacy and inefficient staffing remain of great concern.

Anticipating Fee Examiner comment on staffing issues before fees are incurred will be a useful tool for promoting the efficiency that PROMESA and the circumstances of the Commonwealth require.

Dated this 10th day of May, 2019.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system that will send notification of such filing to all attorneys of record registered in the use of the CM/ECF system.

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